

Fair Political Practices Commission

To: Chairman Randolph; Commissioners Blair, Downey, Karlan and Knox

From: Luisa Menchaca, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: March 4, 2004

1. *California ProLife Council, Inc. v. Karen Getman et al.*

This case is a challenge to the Act's reporting requirements regarding express ballot measure advocacy. On October 24, 2000 the district court dismissed certain counts for standing and/or failure to state a claim. On January 22, 2002, the court denied a motion for summary judgment filed by plaintiff, and granted the FPPC's cross-motion. The Court entered judgment on January 22, 2002, and plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeal. The appeal was briefed by the parties, and by Amici The Brennan Center for Justice and the National Voting Rights Institute (joining in one brief) and the states of Washington, Nevada and Oregon (joining in one brief.) The court heard oral argument on February 11, and rendered its decision on May 8, 2003. The court rejected plaintiff's legal claims, affirming that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy upon demonstrating a sufficient state interest in so doing. The court remanded the matter back to the trial court to determine whether California can establish a state interest sufficient to support its committee disclosure rules, and to determine whether the state's disclosure rules are properly tailored to that interest. To permit more time for discovery, the court issued an amended Scheduling Order on October 21, providing that discovery will extend to May 17, 2004, while discovery relating to expert witnesses will conclude on August 20, 2004. Dispositive motions, if any, will be heard no later than October 29, 2004. Trial is now set for March 7, 2005.

2. *FPPC v. Agua Caliente Band of Cahuilla Indians, et al.*

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions. The suit also alleges that the Agua Caliente Band failed to timely disclose more than \$1 million in late contributions made between July 1, 1998 and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002 ballot. The Agua Caliente Band filed a Motion to Quash Service for Lack of Personal

Jurisdiction, alleging that it is not required to comply with the Political Reform Act because of tribal sovereign immunity. A hearing on that motion was held on January 8, 2003, before the Honorable Loren McMaster, in Department 53 of the Sacramento County Superior Court. On February 27, the court ruled in the Commission's favor. On April 7, 2003, the Agua Caliente Band filed a petition for writ of mandate in the Third Appellate District of the Court of Appeal challenging the decision of the trial court. The petition was summarily denied on April 24, 2003. On May 5, the Agua Caliente Band filed a Petition for Review in the California Supreme Court. On July 2, 2003, the court requested the FPPC to file an Answer to the Agua Caliente Band's Petition for Review by July 11, 2003. The FPPC filed its letter brief Answer on July 11, 2003. The Agua Caliente Band filed its reply on July 14, 2003. On July 23, the Supreme Court granted review and transferred the case to the Third District Court of Appeal, directing that court to vacate its original order and to issue an order directing the Sacramento County Superior Court to show cause why the relief sought in the Agua Caliente Band's petition should not be granted. The parties completed briefing on the petition for writ of mandate, and two amicus briefs were filed in support of the Commission's position by the Attorney General and Common Cause. On January 28, the Superior Court dropped the scheduled status conference and converted the proceeding to the Case Management Program, with a Case Management Conference set for April 1, 2004. The parties must file a Case Management Statement with the Superior Court 15 days prior to the date set for the hearing. Oral argument on the writ proceeding was heard in the Court of Appeal on February 18, 2004 before Justices Blease, Sims, and Davis. On March 3, 2004, the court released its opinion, affirming the Superior Court's decision after concluding that "the constitutional right of the State to preserve its republican form of government trumps the common law doctrine of tribal immunity."

3. FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria

The FPPC alleges in this action that the Santa Rosa Indian Community of the Santa Rosa Rancheria (the Santa Rosa Rancheria) failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than \$500,000 in political contributions to statewide candidates and statewide propositions. The suit also alleges that the Santa Rosa Rancheria failed to disclose more than \$350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended to October 7, 2002. On January 17, 2003, the Santa Rosa Rancheria filed a Motion to Quash Service of Summons and First Amended Complaint. This motion is based upon its claim of tribal sovereign immunity from suit. The FPPC's response to the motion was filed on February 10, 2003. The matter was originally scheduled to be heard on February 20, 2003, but was continued to March 6, 2003 at the request of Defendant. The matter was heard on that date before the Honorable Joe S. Gray in Department 54 of the Sacramento County Superior Court, and on May 13, 2003 the court entered its order in favor of Defendant. On July 14, 2003, the FPPC filed its Notice of Appeal in the Sacramento County Superior Court, thus initiating an appeal of that court's decision in the Third District Court of Appeal. On November 7, 2003 the Commission filed its opening brief in the appeal. Respondents filed their responsive brief on January 15, 2004. On January 28, 2004, the Attorney General's Office filed an amicus brief in support of the Commission's position. The Commission filed its reply brief on February 23,

2004, concluding the briefing on appeal.

4. *FPPC v. American Civil Rights Coalition, et al.*

In a lawsuit filed in the Sacramento County Superior Court on Sept. 3, 2003, the FPPC alleges that the American Civil Rights Coalition (“ACRC”) and its CEO Ward Connerly violated state campaign disclosure laws by failing to file campaign statements reporting the source of almost \$2 million contributed to promote the passage of Proposition 54 on the Oct. 7 ballot. A hearing on the FPPC’s motion for a preliminary injunction was originally scheduled to be heard on Sept. 26, but was rescheduled for September 19 at the request of FPPC attorneys. An Application for Intervention in this lawsuit was filed on September 16 by a group known as the “DOE Class” of past and potential contributors to ACRC, seeking among other things to postpone the September 19 hearing to an unspecified later date. The court went forward with the injunction hearing on September 19, and denied the FPPC’s motion on the ground that the factual record was not sufficiently developed to warrant a preemptive remedy. Defendants next brought a special motion to strike the complaint under Code of Civil Procedure § 425.16. On December 1, 2003, the superior court denied defendants’ motion to strike. On December 3, defendants filed an appeal from the court’s denial of their motion to strike. The clerk’s transcript on appeal was filed on February 13, 2004, and the appellant’s opening brief is due on March 15, 2004. A case management conference in Superior Court is set for March 4, 2004.

5. *FPPC v. Caroline Getty and Wild Rose, LLC*

In a lawsuit filed in the Sacramento County Superior Court on October 16, 2003, the FPPC alleges that Caroline Getty and her wholly owned company Wild Rose, LLC violated state campaign disclosure laws by making two \$500,000 contributions to the Nature Conservancy Action Fund of California in the name of Wild Rose, LLC, without disclosing that Ms. Getty was the true source of the contributions. The first contribution in 2000 was in support of the Propositions 12 & 13 campaign. The second contribution in 2002 was in support of the Proposition 40 campaign. Defendants filed a demurrer to the complaint, as well as a special motion to strike the complaint under Code of Civil Procedure § 425.16. On January 16, 2004, the superior court overruled defendants’ demurrer, and denied the motion to strike. The superior court then directed defendants to file an answer to the complaint by January 26, 2004. Defendants timely filed their verified answers.

6. *Evans v. FPPC, et al.; Walters v. FPPC, et al.*

The plaintiffs in these cases are candidates for the State Assembly who will appear on the March primary ballot in their respective races. Each sought and obtained writs from the Sacramento Superior Court in December on an emergency basis allowing plaintiffs to amend their Form 501, Candidate Statement of Intention, to change their respective designations regarding the acceptance or rejection of voluntary expenditure limits. The Secretary of State and the FPPC opposed the granting of the writs and the FPPC filed a petition for writ of mandamus in the Third District Court of Appeal to overturn the lower court’s decision. The writ petition

was denied without comment, with one judge indicating he would grant the writ. The FPPC filed its notice of appeal in the Superior Court at the end of January and has directed the Clerk of the Superior Court to prepare the transcript for appeal. A briefing schedule has not issued.

7. *FPPC v. Cruz Bustamante, et al.*

In a lawsuit filed in the Sacramento County Superior Court on January 7, 2004, the FPPC alleges that Lieutenant Governor Cruz Bustamante and two of his controlled committees violated state campaign contribution limits and campaign disclosure laws in connection with the 2003 gubernatorial campaign, by receiving contributions in excess of the limits for contributions to the gubernatorial campaign, passing the contributions through the bank account of the 2002 Lieutenant Governor re-election committee, and reporting those funds as contributions to and expenditures by the Lieutenant Governor committee. Defendants were required by the court to file a response to the complaint by February 11, 2004, but were granted an extension of time. The due date is now March 29, 2004.

8. *FPPC v. Californians Against Corruption et al*

The case stems from the FPPC's 1995 administrative prosecution of a recall committee that failed to properly itemize its contributors, in violation of section 84211. In November 1995, the FPPC issued a default decision and order against defendants, imposing an administrative penalty of \$808,000. In January 1996, the FPPC brought a collection action in the Sacramento Superior Court to convert the penalty to a civil judgment. Defendants responded by filing a cross-complaint/petition for writ of mandate in the Superior Court, contesting the default decision. In July 2000, the Superior Court dismissed the defendants' pleadings for failure to prosecute. In March 2001, the Superior Court granted the FPPC's motion for summary judgment in the collection action, and entered judgment for \$808,000 plus interest. Defendants then filed an appeal in April 2001, before the Third District Court of Appeal. The matter was heard on April 22, and on May 29 the court issued its opinion affirming the Superior Court's decision. Defendants next filed a petition for review with the California Supreme Court on July 9, and the FPPC filed its response on July 29. Sitting *en banc*, the California Supreme Court denied the petition on September 11, 2003. Defendants then filed a petition for writ of certiorari with the United States Supreme Court. The FPPC timely filed its opposition to this petition. The Supreme Court has not yet ruled on the matter.